

Order

Michigan Supreme Court
Lansing, Michigan

September 30, 2011

Robert P. Young, Jr.,
Chief Justice

143177

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 143177
COA: 297155
Macomb CC: 2009-001960-FH

LEONARD RICHARD OLEAR,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the April 21, 2011 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

MARILYN KELLY, J. (*concurring*).

I concur with the order denying leave to appeal. The Court of Appeals correctly vacated defendant's probation sentence and remanded for resentencing. However, in light of the Court of Appeals' disposition, the majority's comments regarding the trial court's bases for imposing a downward departure sentence are dicta. Moreover, they are inaccurate. As Judge MURRAY's partial dissenting opinion observed, some of the factors that the majority finds inappropriate are appropriate considerations for the trial court.¹

I agree with Judge MURRAY that the majority attempted to "place handcuffs on the trial court's decision on remand" ² The more prudent action would have been to refrain from addressing the issue.

¹ *People v Daniel*, 462 Mich 1, 7 (2000); *People v Fields*, 448 Mich 58, 77 (1995).

² *People v Olear*, unpublished opinion per curiam of the Court of Appeals, issued April 21, 2011 (Docket No. 297155) (MURRAY, J., concurring in part, dissenting in part).



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 30, 2011

Corbin R. Davis

Clerk